

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 307.10 and 307.12 and 2014 Iowa Acts, chapter 1123, section 5, the Iowa Department of Transportation hereby gives Notice of Intended Action to amend Chapter 116, “Junkyard Control,” Iowa Administrative Code.

These proposed amendments implement 2014 Iowa Acts, chapter 1123, sections 2 to 5, which became effective on July 1, 2014. Iowa Code chapter 306C was revised in accordance with federal regulations contained in the recent highway reauthorization bill “Moving Ahead for Progress in the 21st Century” (MAP-21). Prior to the 2014 Iowa Code revisions, state control over the visibility of junkyards applied to the interstate system only. 2014 Iowa Acts, chapter 1123, extended this control to all routes designated as the national highway system. Within Iowa Code chapter 306C, the national highway system now includes the interstates, most of the major state highways, and a few principal arterial and connector routes which are under municipal or county jurisdiction.

Control measures include screening requirements for junkyards established after May 6, 2015. Junkyards which were already in existence will be classified as nonconforming (grandfathered). Nonconforming sites which expand may be subject to screening requirements. Industrial areas and areas which are not visible to the highway due to natural features are exempt from control.

Continued receipt of the annual federal-aid highway apportionment is contingent upon compliance with federal junkyard control requirements. Failure to maintain effective control results in a reduction of Iowa’s apportionment by approximately \$32 million. This reduction continues on an annual basis until effective control can be demonstrated.

These rules do not provide for waivers. Any person who believes that the person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to Tracy George, Rules Administrator, Iowa Department of Transportation, Office of Policy and Legislative Services, 800 Lincoln Way, Ames, Iowa 50010; Internet e-mail address: tracy.george@dot.iowa.gov.
5. Be received by the Office of Policy and Legislative Services no later than February 10, 2015.

A meeting to hear requested oral presentations is scheduled for Thursday, February 12, 2015, at 10 a.m. at the Iowa Department of Transportation’s Administration Building, First Floor, North Conference Room, 800 Lincoln Way, Ames, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

The proposed amendments may have an impact on small business. A request for a regulatory analysis pursuant to Iowa Code section 17A.4A must be submitted to the Office of Policy and Legislative Services at the address listed in this Notice by February 23, 2015.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 306C.1, 306C.2 and 306C.3 as amended by 2014 Iowa Acts, chapter 1123, sections 2 to 5.

The following amendments are proposed.

ITEM 1. Amend rule **761—116.1(306C)**, definition of “Adjacent area,” as follows:
“*Adjacent area*” means an area which is contiguous to and within 1,000 feet of the nearest edge of the right-of-way of ~~an interstate highway~~ any highway on the national highway system.

ITEM 2. Adopt the following **new** definition of “Nonconforming junkyard” in rule **761—116.1(306C)**:

“*Nonconforming junkyard*” means a junkyard which continues to be legally maintained, but which does not meet any of the exceptions in subrule 116.2(2), and which was lawfully established:

1. Prior to July 1, 1972, and is located within the adjacent area of an interstate highway.
2. Prior to May 6, 2015, and is located within the adjacent area of a noninterstate highway on the national highway system.
3. Prior to the effective date of a zoning change which caused nonconformity with these rules.
4. Prior to the departure or closure of an industrial activity which caused nonconformity with these rules.
5. Prior to the establishment of a highway as part of the national highway system.

ITEM 3. Amend rule 761—116.2(306C) as follows:

761—116.2(306C) Junkyards prohibited—exceptions.

116.2(1) Prohibitions.

a. After July 1, 1972, a person shall not establish, operate, or maintain a junkyard any portion of which is within the adjacent area ~~and is visible from the main traveled way~~ of any interstate highway, ~~except:~~

b. After May 6, 2015, a person shall not establish, operate, or maintain a junkyard any portion of which is within the adjacent area of a highway on the national highway system.

116.2(2) Exceptions. Junkyards that are prohibited in subrule 116.2(1) shall be allowed if they meet one or more of the following criteria:

~~1. a.~~ A The junkyard which is screened by natural objects, plantings, fences, or other appropriate means.

~~2. b.~~ A The junkyard which is located within an industrial zone.

~~3. c.~~ A The junkyard which is located within an unzoned industrial area.

~~4. d.~~ A The junkyard which is not visible from the main traveled portion of the highway.

This rule is intended to implement Iowa Code section 306C.2 as amended by 2014 Iowa Acts, chapter 1123, section 4.

ITEM 4. Amend rule 761—116.3(306C) as follows:

761—116.3(306C) Screening or removal.

116.3(1) Lawfully established junkyards that subsequently become nonconforming. *Nonconforming junkyards.* Any junkyard, ~~except those junkyards which meet the requirements of rule 116.2(306C), that was lawfully in existence on July 1, 1972, and any junkyard that was lawfully established but subsequently becomes nonconforming due to changed conditions, such as a change in zoning or being located upon land adjacent to any highway or land made an interstate highway after July 1, 1972, shall be screened, if feasible, or removed by the department. Nonconforming junkyards which do not meet any of the exceptions in subrule 116.2(2) shall be screened by the department, if feasible, or removed by the department. However, this requirement is conditioned on the availability of participating federal funds for this purpose and a determination by the department that such funds are adequate for this purpose. Prior to the date of the installation of screening or of removal, a nonconforming junkyard may continue in existence unscreened, provided the portion visible to the main traveled way is not increased in height, width, or length. This subrule shall not abrogate any other more restrictive state or local law or regulation which governs the screening, licensing, operation or existence of the junkyard.~~

116.3(2) Junkyards established after July 1, 1972. Owner requirements. Any junkyard established ~~and any portion of any junkyard expanded after July 1, 1972, and any junkyard abandoned or discontinued, except those junkyards or any portion of any junkyard which meets the requirements~~

~~of rule 116.2(306C), shall be screened or removed by the owner at no expense to the department. Required screening shall be maintained by the owner at the owner's expense so long as the junkyard remains subject to these rules. The following junkyards shall be screened or removed by the owner at no expense to the department:~~

~~*a.* Junkyards established after July 1, 1972, and located within the adjacent area of an interstate highway, but which do not meet any of the exceptions in subrule 116.2(2).~~

~~*b.* Junkyards established after May 6, 2015, and located within the adjacent area of a noninterstate highway on the national highway system, but which do not meet any of the exceptions in subrule 116.2(2).~~

~~*c.* Nonconforming junkyards of which portions visible to the main traveled way have increased in height, width, or length since the date the junkyard became nonconforming.~~

~~This rule is intended to implement Iowa Code section 306C.3 as amended by 2014 Iowa Acts, chapter 1123, section 5.~~